

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

NEWREZ LLC d/b/a SHELLPOINT
MORTGAGE SERVICING

Plaintiff,

v.

KIMBERLY USSERY,

Defendant.

No. 2:25-cv-00740-DJC-JDP

ORDER

Plaintiff NewRez LLC, d/b/a Shellpoint Mortgage Servicing brought this unlawful detainer action against Defendant Kimberly Ussery under California state law on August 9, 2024. On March 4, 2025, Defendant filed a Notice of Removal in federal court, seeking to remove the action from the San Joaquin County Superior Court. (Not. of Removal (ECF No. 1).)

A district court has "a duty to establish subject matter jurisdiction over the removed action *sua sponte*, whether the parties raised the issue or not." *United Investors Life Ins. Co. v. Waddell & Reed, Inc.*, 360 F.3d 960, 967 (9th Cir. 2004). The removal statute, 28 U.S.C. § 1441, is strictly construed against removal jurisdiction. *Geographic Expeditions, Inc. v. Estate of Lhotka*, 599 F.3d 1102, 1107 (9th Cir. 2010).

1 It is presumed that a case lies outside the limited jurisdiction of the federal courts, and
2 the burden of establishing the contrary rests upon the party asserting jurisdiction.
3 *Hunter v. Philip Morris USA*, 582 F.3d 1039, 1042 (9th Cir. 2009). The strong
4 presumption against removal jurisdiction means that “the court resolves all ambiguity
5 in favor of remand to state court.” *Hunter*, 582 F.3d at 1042. That is, federal
6 jurisdiction over a removed case “must be rejected if there is any doubt as to the right
7 of removal in the first instance.” *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992).
8 “If at any time before final judgment it appears that the district court lacks subject
9 matter jurisdiction, the case shall be remanded.” 28 U.S.C. § 1447(c). Remand under
10 28 U.S.C. § 1447(c) “is mandatory, not discretionary.” *Bruns v. NCUA*, 122 F.3d 1251,
11 1257 (9th Cir. 1997).

12 “The presence or absence of federal question jurisdiction is governed by the
13 ‘well-pleaded complaint rule,’ which provides that federal jurisdiction exists only when
14 a federal question is presented on the face of the plaintiff’s properly pleaded
15 complaint.” *California v. United States*, 215 F.3d 1005, 1014 (9th Cir. 2000) (quoting
16 *Audette v. Int’l Longshoremen’s & Warehousemen’s Union*, 195 F.3d 1107, 1111 (9th
17 Cir. 1999)). Under the well-pleaded complaint rule, courts look to what “necessarily
18 appears in the plaintiff’s statement of his own claim in the bill or declaration, unaided
19 by anything alleged in anticipation of avoidance of defenses which it is thought the
20 defendant may interpose.” *Id.* (quoting *Oklahoma Tax Comm’n v. Graham*, 489 U.S.
21 838, 841 (1989)). Accordingly, “a case may not be removed to federal court on the
22 basis of a federal defense . . . even if the defense is anticipated in the plaintiff’s
23 complaint, and even if both parties concede that the federal defense is the only
24 question truly at issue.” *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 393 (1987); *see also*
25 *Vaden v. Discover Bank*, 556 U.S. 49, 70 (2009) (“It does not suffice to show that a
26 federal question lurks somewhere inside the parties’ controversy, or that a defense or
27 counterclaim or that a defense or counterclaim would arise under federal law.”).

1 Here, Defendant seeks removal on the basis of federal question jurisdiction, 28
2 U.S.C. § 1441(a), arguing Plaintiff has violated, as relevant here, her rights under 42
3 U.S.C. § 1983 (civil action for deprivation of rights), 18 U.S.C. § 1962 (Racketeer
4 Influence and Corrupt Organizations Act claim, 15 U.S.C. § 1601 (Truth in Lending Act
5 claim), 26 U.S.C. § 7201 (tax evasion claim) and 15 U.S.C. § 1692 (Fair Debt Collection
6 Practices Act claim). (See Removal Not. at 2-3.) However, a review of the complaint
7 filed in state court shows that Plaintiff did not raise a federal claim in that complaint.
8 (Removal Not. at 4-7.) Rather, Plaintiff brings a straightforward unlawful detainer
9 action against Defendant, which is a matter purely of state law. Defendant's reliance
10 on federal law in defending against Plaintiff's state law claim does not suffice to confer
11 jurisdiction on this Court because the defensive invocation of federal law cannot form
12 the basis of this Court's jurisdiction. See *California*, 215 F.3d at 1014. Because there is
13 no federal question appearing in Plaintiff's complaint, Defendant has failed to
14 properly invoke this Court's jurisdiction.

15 Defendant also cites 28 U.S.C. § 1443 as a ground for removal, vaguely
16 asserting that civil rights removal is appropriate due to alleged constitutional and
17 federal statutory violations. (Not. of Removal at 2.) That statute provides two ways for
18 a litigant to remove to federal court. Section 1443(1) provides for removal of civil or
19 criminal cases "[a]gainst any person who is denied or cannot enforce in the courts of
20 such State a right under any law providing for the equal civil rights of citizens of the
21 United States, or of all persons within the jurisdiction thereof" To invoke removal
22 under this section, a defendant must show "[1] rights that are given to them by explicit
23 statutory enactment protecting equal racial civil rights" and "[2] that the state courts
24 will not enforce that right" *Patel v. Del Taco, Inc.*, 446 F.3d 996, 998-99 (9th Cir.
25 2006) (internal citations and quotation marks removed), *abrogated on other grounds*
26 *by BP p.l.c. v. Mayor & City Council of Baltimore*, 593 U.S. 230 (2021). The second step
27 "must be supported by reference to a state statute or a constitutional provision that
28 purports to command the state courts to ignore the federal rights." *Id.* at 999. Here,

1 Defendant fails to support both requirements for removal under Section 1443(1).
2 Defendant has not identified a specific statute protecting equal racial civil rights.
3 Defendant has also not identified a statute or constitutional provision that commands
4 state courts to ignore those rights.

5 Section 1443(2) provides for removal of civil or criminal cases “[f]or any act
6 under color of authority derived from any law providing for equal rights, or for
7 refusing to do any act on the ground that it would be inconsistent with such law.”
8 Removal under section 1443(2), however, is only available if the alleged violation is
9 committed by a state or federal officer or a person assisting such an officer. *ASAP*
10 *Copy & Print v. Canon Bus. Sols., Inc.*, 643 F. App’x 650, 652 (9th Cir. 2016).
11 Defendant does not allege that Plaintiff is an officer or was assisting officers within the
12 meaning of the statute, and thus, cannot advance a claim under this section.

13 Remand to the San Joaquin County Superior Court is therefore appropriate and
14 mandatory. 28 U.S.C. § 1447(c).

15 Accordingly, the Court hereby REMANDS this case to the San Joaquin County
16 Superior Court for all future proceedings.

17 IT IS SO ORDERED.

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19 Dated: March 6, 2025

/s/ Daniel J. Calabretta

20 THE HONORABLE DANIEL J. CALABRETTA
21 UNITED STATES DISTRICT JUDGE
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